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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

4 April 1986

Honorable John K. Bullard
Mayor
City of New Bedford
City Hall
New Bedford, Massachusetts 02740

Dear Mayor Bullard:

As a result of our discussion soon after your election, I understand you have inquired about the possibility of using some creative methods to address a number of the City's environmental difficulties. I want you to know that I firmly support broad-based, cross-media solutions to remediating pollution problems. Although there is a long history of difficult working relationships with your predecessors, the attitude of 'good faith' you have brought to office should make our joint attempts to solve New Bedford's water and waste problems less onerous. To the extent that we can accommodate new approaches within the laws and regulations we administer, it not only is good public policy but clearly makes good sense.

Apparently, officials of the Aerovox Corporation have suggested a strategy to you whereby they would divert funds to the City that they might owe as reimbursement to the federal government for the New Bedford Harbor Superfund site PCB clean-up. The money would be contributed toward the local share of the cost of upgrading the City's sewage treatment facility, on the theory that the existing primary treatment allows such pollutants as PCBs to pass directly through the system; secondary treatment would remove the greater share of any residual PCBs entering the treatment system and keep them from ending up in the Harbor.

After discussions among our staff, it is our view that Superfund does not contemplate the redirection of monies intended to reimburse the Fund. The purpose of the Fund is to allow the government to proceed with site clean-up in the absence of identified or willing responsible parties. Additional authority provided in Superfund for EPA to recover such Fund expenditures from responsible parties is designed to ensure that the Fund will not be depleted. Diversion of monies owed by responsible parties, even for the best reasons, might undercut this basic congressional scheme. If penalties of any type were involved, either in a waste or water-related

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case, however, we may have greater discretion in considering whether the money would have to be sent to the Federal Treasury. You should be aware, however, that EPA's current policy does not allow the use of such monies to fund projects that are already legally required (like the construction of secondary treatment).

In support of their proposal, I understand Aerovox has cited a settlement involving the General Electric Company and PCB contamination in the Hudson River; they suggest the New Bedford situation may be analogous.

My staff has contacted EPA personnel in Region II who are familiar with the Hudson River situation. Although EPA has been engaged in some negotiations with GE concerning certain response measures that might be taken in and abutting the Hudson River, no Superfund settlement between GE and EPA has been accomplished. I understand that ten years ago the State of New York did enter into a settlement with GE whereby GE contributed money to studying PCBs in the Hudson and agreed to reduce substantially below NPDES permit limitations the discharge of PCBs into the river. EPA was not a party to this settlement and the settlement pre-dated the enactment of Superfund.

If Aerovox believes approaches have been implemented to respond to the Hudson River PCB contamination which are analogous to its situation, I suggest that the Company describe them in detail and present a concrete proposal concerning New Bedford Harbor to us and other appropriate government entities. Any such proposal would give rise to difficult legal and policy issues in the context of on-going litigation; I can assure you, however, that we would give it thoughtful consideration.

Sincerely,

MR
Michael R. Deland
Regional Administrator

cc: Jeff Pike, Office of Congressman Studds

Am delighted you are at the helm! Will be in touch soon on our other issues of mutual interest. My best -